

1                               **BEFORE THE STATE OF CALIFORNIA**  
2                               **ENERGY RESOURCES CONSERVATION**  
3                               **AND DEVELOPMENT COMMISSION**  
4

5                               Implementation of Renewables Portfolio Standard  
6                               Legislation (Public Utilities Code Sections 381,  
7                               383.5, 399.11 through 399.15, and 445;  
8                               [SB 1038], [SB 1078]

Docket No. 03-RPS-1078  
RPS Proceeding

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10                              **COMMENTS BY CALIFORNIA BIOMASS ENERGY ALLIANCE ON**  
11                              **INCREMENTAL GEOTHERMAL GENERATION**  
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**Dated: March 28, 2003**

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13           **I. INTRODUCTION**

14           The California Biomass Energy Alliance (“CBEA”) is pleased to submit the  
15           following comments on the construction of the term “incremental geothermal generation”  
16           as defined in SB 1078. These comments follow participation in the California Energy  
17           Commission (“CEC”) Staff Workshop on this subject on March 25, 2003.

18           CBEA is critically concerned with two issues raised in the workshop, one of which  
19           is squarely before the CEC, and one of which is more centrally to be determined by the  
20           California Public Utilities Commission (“PUC”):

21           (1) What geothermal energy should be considered “incremental” for purposes of  
22           SB 1078?

23           (2) For the purpose of Transitional Procurement, what is the appropriate treatment  
24           of geothermal energy that is not determined to be “incremental” for SB 1078 purposes?

25           The resolution of both these issues, which are addressed through the 16 questions  
26           posed by CEC staff, will have a dramatic impact on the survival of existing “orphan”  
27           biomass plants as well as the investment in and development of new renewable resources.  
28

## **II. THE INTENT OF SB 1078**

We think it clear that SB 1078 chose a baseline of 2001 sales to IOUs for a reason: to take that baseline and attempt to increase it. SB 1078 generally allows existing facilities that did not sell to IOUs at the baseline date to be eligible for the 1% annual “net increase” procurement target set forth in SB 1078, but with special provisions for small hydro and geothermal, as set forth in Section 399.12(a)(2) and (3). The special treatment of small hydro and geothermal were designed with reality in mind: that there was so much of that existing energy that PG&E had divested and was now being sold into the market, that allowing re-contracting with PG&E or other IOUs as a means of meeting the RPS would not only chill, but freeze the ability of other renewable resources to survive or be created.

We agree that SB 1078 was a compromise; any non-incremental geothermal power can still count toward an IOU’s baseline, thus hastening the day when its RPS obligations will be satisfied. The non-incremental power cannot be used, however, to meet the annual 1% net increase requirement.

## **III. THE INTENT OF THE PUC FOR TRANSITIONAL PROCUREMENT**

Staff question #2 raised the innocent question of whether non-incremental geothermal procurement by an IOU during the Transitional Procurement ordered by the PUC should count toward the IOU’s baseline. However, during the workshop certain parties contended that the word “incremental” meant something different during Transitional Procurement than it does for SB 1078. We are clear that it does not. A spirited discussion ensued.

Because this issue is central to the “orphan” biomass facilities (those with DWR short-term contracts), we are constrained to address that issue in these comments, even though we think it clear that this additional issue, not intended to be addressed in Question #2, is solely within the purview of the same Commission that ordered the Transitional Procurement.

#### IV. THE STRUCTURE OF THESE COMMENTS

Because of the centrality of the Transitional Procurement issue, we devote the first section of these comments to that issue.

Questions 7 and 16, pertaining to the field-wide nature of geothermal production, form the basis for considering what is “incremental” geothermal production. We therefore comment on those questions next.

Questions 6, 10, and 11, pertaining to what constitutes historical production, what constitutes natural decline, and how to allocate investments between “maintenance” and “capital investment” are logically next. We then provide comments on the other questions posed by staff.

**A. The PUC has made clear that the definition of “incremental geothermal generation” is the same for the 1% Transitional Procurement and the RPS program**

**Question 2.** If an IOU contracted for geothermal generation from a facility that began operation before September 26, 1996 as part of its Transitional Procurement, and if that energy is not determined to be “incremental” geothermal energy pursuant to SB 1078, would that energy become an “adjustment” to that IOU’s baseline?

The answer to this question is yes; moreover, that energy would *not* be counted toward the 1% Transitional Procurement. As explained below, the PUC has made clear that the definition of “incremental geothermal generation” is the same for the 1% Transitional Procurement and the RPS program. Thus, if the CEC determines that certain geothermal energy is not incremental for the purposes of SB 1078, it is not incremental for the purposes of the 1% Transitional Procurement.<sup>1</sup>

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<sup>1</sup> The best interpreter of the PUC’s intent is, of course, the PUC. CBEA therefore respectfully recommends that the CEC limit its decision to determining whether the geothermal power in question is “incremental” under SB 1078. It is the PUC’s job to determine how to utilize this information with respect to the Transitional Procurement.

1                   1.     **The structure and language of Decision 02-10-062 make clear**  
2                             **that the definition of “incremental geothermal generation” from**  
3                             **SB 1078 applies to both the Transitional Procurement and the**  
4                             **RPS program.**

5             The section on “Renewable Resources” in Decision 02-10-062 is divided into 3  
6 parts. D.02-10-062 at 19-27. The first part is the text immediately following the major  
7 heading, “B. Renewable Resources.” This text consists of 3 pages devoted solely to  
8 carefully defining the term “renewable generation.” The definition includes language  
9 identical to that of SB 1078 regarding incremental geothermal generation.

10            This definition section is followed by 2 subsections: subsection B.1. is called  
11 “Renewable Procurement Prior to Full RPS Implementation” and discusses  
12 implementation of the 1% Transitional Procurement; subsection B.2. is called  
13 “Implementing the Renewable Portfolio Standard Program” and discusses implementation  
14 of the RPS program. Neither of the subsections further define the term “renewable  
15 generation.”

16            This structure strongly implies that the definition of renewable generation in the  
17 first section is meant to apply to the following 2 sub-sections, i.e., to both the Transitional  
18 Procurement and the RPS requirement. The first sentence of the section announces:  
19 "Before giving specific direction on renewable procurement, it is important to have a clear  
20 definition of what constitutes 'renewable generation.'" D.02-10-062 at 19. Nowhere in  
21 the text does it state that there will be a different definition used for the Transitional  
22 Procurement and the RPS Procurement. Moreover, since the subsections address both the  
23 Transitional Procurement and the RPS requirement, it would be odd for the definition  
24 section at the front to be devoted entirely to providing a definition for the RPS  
25 requirement.

26            The definition section concludes by saying, "In addition to these provisions in SB  
27 1078, we include in our definition of renewable generation, *for purposes of compliance*  
28 *with both D.02-08-071 and SB 1078*, renewable distributed generation (DG) on the  
customer side of the meter." D.02-10-062 at 21 (emphasis added). Although the meaning

of this sentence is a bit ambiguous, the most sensible and straightforward way to interpret this language is to read the phrase “for purposes of compliance with both D.02-08-071 and SB 1078” as being intended to modify the phrase “our definition of renewable generation.” In other words, this sentence means that the *entire* definition section applies to both the Transitional and RPS Procurements, not just the DG definition that follows. Again, it would make no sense if the only part of the definition section that applied to the Transitional Procurement were the last small paragraph on DG. If that were the case, where is the rest of the definition for the Transitional Procurement?

2. **In Decision 02-12-074, the PUC makes clear that “incremental” means the same thing for both the Transitional Procurement and the RPS program.**

In Decision 02-12-074, the PUC holds:

As clarified in D.02-10-062, incremental production from existing facilities *is* eligible to meet the *1% interim procurement target*. We must be able to ascertain, however that this generation is in fact incremental, and *for this purpose – and for the purposes of RPS implementation beginning next year* – we will rely on the analysis of the CEC.

D.02-12-074 at 20 (some emphasis added). In this paragraph, the PUC makes clear not only that the definition of incremental is the same for the Transitional Procurement and the RPS program, but that the CEC is the entity that will determine what is incremental.

**B. Historical and baseline production must be judged on a field-wide basis**

**Question 7.** Should such historical production trends be examined on a well-by-well, facility-by-facility basis, or for the geothermal field as a whole?

It would appear to be a unanimous consensus of the parties that the capacity of the geothermal field as a whole is the determinant of historical production trends and existing baseline capacity. We agree with and endorse the comments of CalWEA on this issue.

**Question 16.** Within the Geysers, can steam be shifted from one generating unit to another? If so, and if incremental geothermal generation were determined on a unit-by-unit basis, could “existing” steam from one or more units be shifted to another unit so as to make that unit appear to have

1 “incremental” generation when it really does not? If it can,  
2 how can the Energy Commission prevent such manipulation?

3 Calpine agreed in the workshop that steam can be shifted from one generating unit  
4 to another, and that generation must be judged on a field-wide basis. Once generation is  
5 determined to be incremental, and only then, could the incremental generation be  
6 allocated to individual units.

7 **C. Historical production and maintenance, compared to capital investment**  
8 **to produce incremental generation, must be determined carefully.**

9 **Question 6.** SB 1078 refers to geothermal “historical  
10 production trends.” How many years of historical production  
11 should the Energy Commission consider?

12 **Question 10.** What constitutes capital investment that results  
13 in incremental production, rather than maintenance of  
14 production? How should the Energy Commission distinguish  
15 between investments that increase production versus  
16 investments that maintain production in the context of a  
17 declining historical production trend?

18 **Question 11.** Do investments in wastewater injection projects  
19 result in incremental production? How is this incremental  
20 production measured on a facility basis?

21 The CEC must utilize a resource specialist to determine what production capacity  
22 the Geysers have. Assuming temperature to be constant, or nearly so, one question is  
23 whether historical production trends are based on the natural decline of the resource or  
24 “mining the water” (like over-drafting an aquifer) so as to “over-use” the field. If the  
25 latter, there is a question as to whether the addition of water by human means is  
26 maintenance or repair of the resource rather than a capital investment resulting in a  
27 reverse of a natural decline.

28 Several participants in the workshop noted the “gaming” potential of trying to  
determine whether sinking a new well, injecting wastewater, or changing a turbine is  
maintenance or a new investment worthy of “incremental” classification. Several other  
participants disagreed on whether to consider 5, 10, or 15 years of production.

1           Given the resource investment that the CEC would have to make to resolve these  
2 issues, and the general intent of SB 1078, the best solution is to take 2001 total field  
3 production as the baseline and to judge incremental production from that date.

4   **V.    ANSWERS TO OTHER STAFF QUESTIONS**

5           **Question 1.** Was any geothermal energy from a facility that  
6 began operating before September 26, 1996 under contract to  
7 an Investor Owned Utility (IOU) during 2001? If so, is the  
8 expectation that those sales of geothermal generation would  
9 become part of that IOU's RPS baseline?

10          The answer to these questions is obviously yes.

11           **Question 2.** If an IOU contracted for geothermal generation  
12 from a facility that began operation before September 26,  
13 1996 as part of its Transitional Procurement, and if that energy  
14 is not determined to be "incremental" geothermal energy  
15 pursuant to SB 1078, would that energy become an  
16 "adjustment" to that IOU's baseline?

17          Yes, if the energy were determined not to be "incremental," it would nevertheless  
18 be counted as an "adjustment" to that IOU's baseline.

19           **Question 3.** If geothermal energy purchased by an IOU as  
20 part of its Transitional Procurement is determined to be  
21 "incremental" pursuant to SB 1078, would that energy count  
22 toward fulfillment of that IOU's RPS Annual Procurement  
23 Target? Would such energy be eligible for Supplemental  
24 Energy Payments (SEP) pursuant to SB 1038?

25          The energy would be counted toward the Annual Procurement Target. Whether it  
26 would be eligible for SEPs is another issue, and is not necessarily determined by the  
27 answer to whether the energy is "incremental."

28           **Question 4.** If the Energy Commission identifies incremental  
geothermal generation that is not yet under contract to a retail  
seller, and a retail seller contracts for that incremental  
generation through a future RPS solicitation, should that  
energy be eligible for Supplemental Energy Payments?

See answer to Question 3 above.

**Question 8.** Should entities that are seeking an Energy  
Commission determination that a portion of their geothermal



1 generation is incremental be required to make public any data  
2 that they use to substantiate such a claim?

3 We agree that confidentiality should be highly disfavored in these proceedings.

4 CBEA does not comment on the other questions raised by CEC staff regarding  
5 incremental geothermal on grounds that they are either not applicable or that CBEA has  
6 nothing to add to the comments of others on these issues.

7 **VI. CONCLUSION**

8 CBEA respectfully requests that the Commission take into account its comments  
9 when determining whether the geothermal power procured by the utilities is “incremental”  
10 for the purpose of satisfying the PUC’s Transitional Procurement and the RPS program.

11  
12 Respectfully submitted,

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